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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW STREAM COMMERCIAL FINANCE,
LLC,

Plaintiff,

- against -

STAR OF AMERICA, O.N. 973452,
her engines, tackle, gear and
appurtenances, etc., *in rem*; MAJESTIC
STAR, O.N. 1100715, her engines, tackle,
gear and appurtenances, etc.; *in rem*; Majestic
Voyages, Inc., *in personam*; and Majestic Star, Inc.,
in personam,

Defendants.

ECF CASE

Civ. No. 08 Civ. 3171 (AKH)
(In Admiralty)

**MEMORANDUM OF LAW IN SUPPORT OF EX PARTE MOTION FOR
AN ORDER AUTHORIZING PUBLICATION OF NOTICE OF ARREST**

Plaintiff NEW STREAM COMMERCIAL FINANCE, LLC ("New Stream") has moved pursuant to Supp. Fed. R. Civ. P. C(4) and Local Admiralty Rule C.2, for this Court to issue an order authorizing publication of notice of arrest of the vessels STAR OF AMERICA, O.N. 973452, and MAJESTIC STAR, O.N. 1100715, (the "Vessels").

I. **BACKGROUND**

On March 31, 2008, New Stream filed a Verified Complaint against the Vessels and their owners Majestic Star, Inc. and Majestic Voyages, Inc. That same day, this Court issued

Warrants for Maritime Arrest of the Vessels. The Warrants were executed by the United States Marshal the following day. The Vessels are currently under arrest at Surfside 3 Marina, Chelsea Piers, Pier 60.

Personal service has been effected upon Majestic Star, Inc. and Majestic Voyages, Inc., in accordance with Supp. Fed. R. Civ. P. C(4). In addition, notice of the arrest has also been sent to all individuals and/or entities known to New Stream which may have an interest in the Vessels. Said notice was sent via Federal Express and Regular U.S. Mail on April 2, 2008.

Also on April 2, 2008, Defendants filed an Answer to the Verified Complaint, admitting and conceding to the allegations of the Verified Complaint. No other statements of right have been filed on behalf of anyone claiming an interest in the Vessels.

II. STANDARD

Supp. Fed. R. Civ. P. C(4) requires public notice if property seized under Supplemental Rule E is not released within ten days of execution. Supp. Fed. Civ. P. C(4). However, it does not preclude earlier public notice being made. Said notice of the action and arrest is to be made "in a newspaper designated by court order and having general circulation in the district." Id.

III. DISCUSSION

The Vessels were placed under arrest by the United States Marshal on April 1, 2008. The Vessels are still under arrest, and it is not anticipated that the Vessels will be released within ten days of arrest. As such, New Stream, in accordance with Supp. Fed. Civ. P. C(4), seeks to publish notice of the action and arrest. New Stream seeks to publish notice in the JOURNAL OF COMMERCE, or other publication, which has general circulation in the district, as ordered by the Court. A copy of the proposed notice is attached to the accompany Affidavit of Joseph G. Grasso as Exhibit A.

IV. CONCLUSION

Supp. Fed. R. Civ. P. C(4) requires publication of notice of arrest if instances where a vessel has not been released within ten days of arrest. It is anticipated that the Vessels will not be released within ten days of arrest, and Plaintiff seeks to publish notice of arrest at this time. Accordingly, New Stream's motion to publish notice of arrest should be granted.

Dated: New York, New York
April 3, 2008

THACHER PROFFITT & WOOD LLP

By: 

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